

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

ETI Sound Systems, Inc.

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File No.: EB-10-SE-052

Acct. No.: 201232100021

FRN: 0021561014

ORDER

Adopted: May 11, 2012**Released: May 11, 2012**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and ETI Sound Systems, Inc. (ETI). The Consent Decree resolves and terminates the Bureau's investigation into ETI's compliance with Section 302(b) of the Communications Act of 1934, as amended (the Act),¹ and Sections 2.803, 2.1203, 15.19, 15.21, and 15.105 of the Commission's rules (Rules)² pertaining to the marketing of digital radio frequency devices, including guitar amplifiers, CD/MP3 players, and active speaker systems.

2. The Bureau and ETI have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation. In the absence of new material evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether ETI possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act,³ and Sections 0.111 and 0.311 of the Commission's Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803, 2.1203, 15.19, 15.21, 15.105.

³ 47 U.S.C. §§ 154(i), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Avi El-Kiss, Vice President, ETI Sound Systems, Inc., 3383 Gage Avenue, Huntington Park, CA 90255, and to Martin L. Stern, Counsel to ETI Sound Systems, Inc., K&L Gates LLP, 1601 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

**Before the
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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and ETI Sound Systems, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of Section 302(b) of the Communications Act of 1934, as amended,⁵ and Sections 2.803, 2.1203, 15.19, 15.21, and 15.105 of the Commission's rules⁶ pertaining to the marketing of digital radio frequency devices, including guitar amplifiers, CD/MP3 players, and active speaker systems.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which ETI is subject by virtue of its business activities, including but not limited to, the Equipment Marketing Rules.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 9.
 - (g) "Covered Employees" means all employees and agents of ETI who perform, or supervise, oversee, or manage the performance of, duties that relate to ETI's responsibilities under the Equipment Marketing Rules.

⁵ 47 U.S.C. § 302a(b).

⁶ 47 C.F.R. §§ 2.803, 2.1203, 15.19, 15.21, 15.105.

- (h) “Digital Device” means an unintentional radiator device or system as defined in Section 15.3(k) of the Rules.⁷
- (i) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (j) “Equipment Marketing Rules” means Section 302(b) of the Act⁸ and Sections 2.803, 2.1203, 15.19, 15.21, and 15.105 of the Rules⁹ and other Communications Laws governing the marketing of radio frequency devices within the United States and its territories.
- (k) “ETI” means ETI Sound Systems, Inc., d/b/a B-52 Professional, d/b/a Boutique Amps Distribution, and its predecessors-in-interest and successors-in-interest.
- (l) “Investigation” means the investigation commenced by the Bureau’s July 9, 2010 letter of inquiry¹⁰ regarding whether the marketing of certain Digital Devices by ETI complies with the Equipment Marketing Rules.
- (m) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by ETI to implement the Compliance Plan.
- (n) “Parties” means ETI and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act¹¹ and Sections 2.803, 2.1203, 15.19, 15.21, and 15.105 of the Rules,¹² certain Digital Devices may not be marketed in the United States unless the devices comply with the applicable technical standards as well as the administrative requirements relating to equipment labeling and consumer disclosure. ETI markets Digital Devices such as guitar amplifiers with built-in digital signal processors, CD/MP3 players, and active speaker systems. These Digital Devices are unintentional radiators subject to authorization via the Commission’s equipment verification procedures.¹³

3. On July 9, 2011, the Bureau’s Spectrum Enforcement Division issued a letter of inquiry (LOI) to ETI, directing ETI to submit a sworn written response to a series of questions relating to ETI’s manufacture, importation, and marketing of its Prodigy CD/MP3 players, its Matrix active speaker system, and its Rebel and Renegade guitar amplifiers.¹⁴ ETI responded to the LOI on September 8, 2010

⁷ *Id.* § 15.3(k).

⁸ 47 U.S.C. § 302a(b).

⁹ 47 C.F.R. §§ 2.803, 2.1203, 15.19, 15.21, 15.105.

¹⁰ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Avi El-Kiss, Vice President, ETI Sound Systems, Inc. (File No. EB-10-SE-052; July 9, 2010).

¹¹ 47 U.S.C. § 302a(b).

¹² 47 C.F.R. §§ 2.803, 2.1203, 15.19, 15.21, 15.105.

¹³ *Id.* § 15.101.

¹⁴ See *supra* note 6.

(LOI Response).¹⁵ In its LOI Response, ETI provided detailed information about the product lines that require testing and authorization, noting however that it primarily markets non-digital sound system devices that are not subject to the Commission's equipment authorization procedures.¹⁶ ETI also stated that it had undertaken a top-to-bottom review of its equipment authorization compliance.¹⁷ The Bureau and ETI executed tolling agreements to toll the statute of limitations.¹⁸

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

5. **Jurisdiction.** ETI agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, ETI agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against ETI concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against ETI with respect to ETI's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, ETI shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that ETI complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Equipment Marketing

¹⁵ See Letter from Avi El-Kiss, Vice President, ETI Sound Systems, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 8, 2010).

¹⁶ LOI Response at 2.

¹⁷ *Id.* at 2-3.

¹⁸ See, e.g., Tolling Agreement Extension, File No. EB-10-SE-052, executed by and between John D. Poutasse, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Martin Stern, K&L Gates LLP, Counsel to ETI Sound Systems, Inc. (Jan. 4, 2012).

Rules prior to assuming his/her duties. The initial Compliance Officer as of the Effective Date will be Avi El-Kiss, Vice President, ETI. ETI represents and warrants that, as of the Effective Date, Mr. El-Kiss is ETI's only Covered Employee, as such term is defined herein.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, ETI agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Equipment Marketing Rules, ETI shall implement the following procedures:

- (a) **Operating Procedures on Equipment Marketing.** Within sixty (60) calendar days after the Effective Date, ETI shall establish Operating Procedures that the Compliance Officer and any person who becomes a Covered Employee after the Effective Date must follow to help ensure ETI's compliance with the Equipment Marketing Rules. ETI's Operating Procedures shall include internal procedures and policies specifically designed to ensure that all Digital Devices and other radio frequency devices marketed by ETI comply with applicable technical standards, have been properly authorized (via the certification, verification, or declaration of conformity procedures, as applicable), and comply with the applicable administrative requirements relating to equipment labeling and consumer disclosure.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop a Compliance Manual and distribute the Compliance Manual to any person who becomes a Covered Employee after the Effective Date, within thirty (30) calendar days after the date such person becomes a Covered Employee. The Compliance Manual shall explain the Equipment Marketing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure ETI's compliance with the Equipment Marketing Rules. ETI shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. ETI shall distribute any revisions to the Compliance Manual promptly to any Covered Employees.
- (c) **Compliance Training Program.** Recognizing that the Compliance Officer is required to have specific knowledge of the Equipment Marketing Rules under the terms of paragraph 8 above, and given ETI's representation that the Compliance Officer is ETI's only Covered Employee as of the Effective Date, the following training obligations shall apply in the event that any person, in addition to the Compliance Officer, becomes a Covered Employee at any time after the Effective Date: (i) ETI shall establish and implement a Compliance Training Program on compliance with the Equipment Marketing Rules and the Operating Procedures; (ii) as part of the Compliance Training Program, Covered Employees shall be advised of ETI's obligation to report any noncompliance with the Equipment Marketing Rules under paragraph 10 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer; (iii) any person who becomes a Covered Employee at any time after the Effective Date shall be trained pursuant to the Compliance Training Program within thirty (30) calendar days after the date such person becomes a Covered Employee; and (iv) ETI shall repeat the compliance training on an annual basis and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

10. **Reporting Noncompliance.** ETI shall report any noncompliance with the Equipment Marketing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that ETI has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that ETI has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W. Washington, D.C. 20554, with a copy submitted electronically to Neal McNeil at Neal.McNeil@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

11. **Compliance Reports.** ETI shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each compliance report shall include a detailed description of ETI's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Equipment Marketing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of ETI, stating that the Compliance Officer has personal knowledge that ETI (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 10 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules¹⁹ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of ETI, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that ETI has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that ETI has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Neal McNeil at Neal.McNeil@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

12. **Termination Date.** Unless stated otherwise, the obligations set forth in paragraphs 8 through 11 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

¹⁹ 47 C.F.R. § 1.16.

13. **Voluntary Contribution.** ETI agrees that it will make a voluntary contribution to the United States Treasury in the amount of thirty-four thousand dollars (\$34,000) (Voluntary Contribution), such Voluntary Contribution to be made in four (4) quarterly payments (each an Installment Payment) of Eight Thousand Five Hundred Dollars (\$8,500). The first payment is to be made within thirty (30) calendar day after the Effective Date, with remaining payments due on or before September 3, 2012, December 3, 2012, and March 1, 2013. ETI acknowledges and agrees that upon execution of this Consent Decree the Voluntary Contribution and each Installment Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. §3701(b)(1).²⁰ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. In addition, ETI agrees that it will make the first and all subsequent Installment Payments in United States Dollars without further demand or notice by the dates specified above. Installment Payments must be made by check or similar instrument, payable in United States Dollars to the order of the Federal Communications Commission. The payments must include the Account Number and FRN referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 270000001. For payments by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). ETI shall also send electronic notification to Neal McNeil at Neal.McNeil@fcc.gov, Ricardo Durham at Ricardo.Durham@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date each payment is made.

14. **Event of Default.** ETI agrees that an Event of Default shall occur upon the failure by ETI to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

15. **Interest, Charges for Collection, and Acceleration of Maturity Date.** Upon an Event of Default under this Consent Decree, the then unpaid amount of the Voluntary Contribution shall accrue interest, computed using the rate of the U.S. Prime Rate in effect on the date of the Event of Default, plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Voluntary Contribution, together with interest, as aforesaid, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charge(s), plus the costs of collection, litigation, and attorneys’ fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by ETI.

16. **Waivers.** ETI waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. ETI shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither ETI nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and ETI shall waive any statutory right to a trial *de novo*. ETI hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 et seq., relating to the matters addressed in this Consent Decree.

²⁰ Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

17. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

18. **Subsequent Rule or Order**. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which ETI does not expressly consent) that provision will be superseded by such Rule or Commission order.

19. **Successors and Assigns**. ETI agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

20. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws, and that by entering into this Consent Decree, ETI does not admit to or deny any violation of the Communications Laws.

21. **Modifications**. This Consent Decree cannot be modified without the advance written consent of both Parties.

22. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

23. **Authorized Representative**. The individual signing this Consent Decree on behalf of ETI represents and warrants that he is authorized by ETI to execute this Consent Decree and to bind ETI to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

24. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Avi El-Kiss
Vice President
ETI Sound Systems, Inc.

Date